JD(NY)-11-21
Newark, NJ

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

ARBAH HOTEL CORP. d/b/a
MEADOWLANDS VIEW HOTEL

Respondent

and **Cases 22-CA-257539**
22-CA-259975

NEW YORK HOTEL AND MOTEL
TRADES COUNCIL, AFL-CIO

Charging Party

Sharon Chau, Esq.,
for the General Counsel.
David T. Shivas, Esq.,
for Respondent.
Amy Bokerman, Esq.,
*f*or the Charging Party.

DECISION

STATEMENT OF THE CASE

JEFFREY P. GARDNER, Administrative Law Judge. Pursuant to the Board's decision in *William Beaumont Hospital*, 370 *NLRB* No. 9 (Aug. 13, 2020), on January 20 and 21, 2021, I conducted a trial via Zoom Government in this case, during which all parties were afforded the opportunity to present their evidence.[1] The complaint (GC Exh. 1(h)),[2] alleges that Respondent violated Section 8(a)(1) of the Act by disparaging and denigrating the Charging Party Union, New York Hotel and Motel Trades Council, AFL-CIO (hereafter "the Union"); violated Section 8(a)(3) and (1) of the Act by terminating all of its employees; and violated Section 8(a)(5) and (1) of the Act by failing to bargain with the Union over those terminations, by subcontracting unit work without bargaining with the Union, by failing to provide relevant information requested by the Union regarding the terminations and subcontracting, and by withdrawing recognition of the Union as the collective bargaining representative of the unit employees.

In its answer, Respondent admitted to many of the procedural allegations, but denied the substantive allegations of the complaint, arguing that the actions it took were lawfully

[1] Ryan White, a Board attorney, served as Courtroom Deputy to assist with the Zoom technology during a portion of the trial, and is recused from otherwise participating in the case.

[2] Abbreviations used in this decision are as follows: "Tr." for the Transcript, "Br." for party briefs, "GC Exh." for the General Counsel's exhibits, "CP Exh." for the Charging Party's exhibits, "R. Exh." for Respondent's Exhibits, and "Jt. Exh." for Joint Exhibits, if any. Specific citations to the transcript and exhibits are included only where appropriate to aid review, and are not necessarily exclusive or exhaustive.

justified by the COVID-19 pandemic. After the trial, the General Counsel and Respondent each filed briefs, which I have read and considered.[3] Based on those briefs and the entire record, including the testimony of the witnesses and my observation of their demeanor, I make the following:

FINDINGS OF FACT

I. JURISDICTION

Respondent is a corporation engaged in the operation of a hotel in North Bergen, New Jersey under the name "Meadowlands View Hotel." It admits to the Board's jurisdiction, including that it is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act. Respondent also admits that the Union is a labor organization within the meaning of Section 2(5) of the Act, and that since January 2011, Respondent has recognized the Union as the exclusive collective-bargaining representative of the following bargaining unit of employees employed at its hotel:

> All room attendants, housemen, porters, linen room, drivers, maintenance, cooks, waiters, waitresses, busboys and dishwashers excluding all supervisory personnel.

As such, I find that Respondent is an employer under the Act, the Union is a labor organization under the Act, and the matter is properly before the Board.

II. ALLEGED UNFAIR LABOR PRACTICES

THE FACTS

Respondent and the Union were parties to a collective bargaining agreement which by its terms was in effect from July 1, 2011 to June 30, 2015. Despite commencing bargaining for a successor contract as early as May 2014, the parties have not reached agreement, and the expired collective bargaining agreement remains the most recent.

In the interim, the Union filed a series of prior unfair labor practice charges in 2017 and 2018 upon which complaint issued and a trial held before Administrative Law Judge Lauren Esposito. On December 20, 2018, Judge Esposito found that Respondent had violated the Act by failing to bargain with and bypassing the Union, unlawfully discharging a Union shop steward, restricting Union access, and by threatening and then failing to remit payment for the employees' negotiated health insurance benefits. The Board affirmed the ALJ's decision on November 29, 2019. *Arbah Hotel Corp. et al.*, 368 NLRB No. 119 (2019).

Following that Board Order, the Union's counsel, Amy Bokerman, repeatedly emailed Respondent counsel, David Shivas, seeking to resume negotiations for a successor contract, and the parties did meet briefly for negotiations on February 6, 2020. That meeting was attended by counsel for both parties, along with management representatives Wysocki and Desiree Ruiz for Respondent. Only the Union presented a contract proposal, and the meeting lasted only 15-20 minutes.

[3] Charging Party, though represented by counsel at the hearing, did not file a separate brief.

It is undisputed that beginning in early 2020, Respondent experienced a significant drop in the number of guests staying in the hotel, resulting in a sharp decline in revenue, which continued through the entire year. This decline was not limited to Respondent's property, but rather, was seen throughout the hotel industry. In response to the reduced number of guests, Respondent began taking steps that included closing all the rooms on select floors and closing the restaurant located in the hotel. Still, there was no mention at the February 6, 2020 meeting of an inability on Respondent's part to pay its employees.

There was also no mention of the possibility of layoffs by any of Respondent's representatives at the February 6 meeting, or any mention of a plan to hire independent contractors to perform bargaining unit work at the hotel. Nevertheless, two weeks later, on February 20, 2020, Respondent entered into an agreement with Express Employment Professionals ("EEP") to hire agency employees to perform that work. It is undisputed that Respondent neither bargained with nor notified the Union in advance of its intention to use agency employees to perform bargaining unit work.

Despite the reduction in the number of guests, and the steps Respondent began in response, it had not ceased operations when on or about February 29, 2020, just three months after the Board's decision above, Respondent terminated its entire bargaining unit. Also, on February 29, 2020, Respondent began using EEP employees to perform the bargaining unit work which was previously performed by the terminated unit employees.

On February 29, 2020, Respondent's manager Vanessa Rubio held a meeting with the unit employees present at the hotel, including laundry employee Cecilia Guevara. Rubio told the employees that they were all being fired, and that she was being fired as well. She handed out a termination letter to each employee present which stated that their terminations were effective as of that day, February 29, 2020.

Meanwhile, another laundry employee, Fausta Flores, was not at the meeting, but received a text from her supervisor telling her to come to work the following day, March 1, 2020, which she did. When she arrived early that morning, she saw Guevara, who told her that they were terminated. Guevara, Flores and the other newly-terminated employees did not leave however. Instead, they remained at the hotel to wait to speak to Respondent's Vice President Mark Wysocki.

At approximately 1:30 p.m. on March 1, 2020, Wysocki and Rubio spoke to the assembled employees in the hotel lobby. Flores took video of the meeting, which was played during the hearing and admitted into evidence along with a certified transcript. Wysocki told the employees that the Union was "very unreasonable" and that he had warned them that if they were "stiff and strong with negotiations, everybody will lose their jobs" and "this place would go bankrupt."

Rubio, who is bilingual in English and Spanish, translated some of what Wysocki was saying to the employees, and told them in Spanish that the Union "ha[d] not be [sic] willing to negotiate" and that the Union "told [Wysocki], clearly told him they do not care." Rubio told the employees that Wysocki told the Union "several times" that Respondent was "going to have to close all the Union departments if they don't want to continue negotiating."

Wysocki went on to tell the employees that he was only allowed to talk to them because they had been terminated, and said that previously, "I couldn't talk to you because the Union

prevented me from talking to you." He told the employees that the Union had cost Respondent $300,000 in legal fees that could have instead "payed [sic] your salary" and repeated that the Union would not permit him to talk to them, that it would sue him if he tried to talk to them "when [they] were members of the Union." Wysocki also told the employees that the Union "didn't let you to use the insurance that I provided."

At no time during this meeting did either Wysocki or Rubio mention the COVID-19 pandemic as the cause of Respondent's economic concerns or of the employees' terminations. Rather, they focused all of their statements to employees on the Union and the legal costs incurred relating to the Union charges with the Board.

The following day, March 2, 2020, Union Vice President George Padilla and Union Business Representative Thomas Oliva went to Respondent's facility and initially spoke with Rubio in Wysocki's absence. Rubio told them that she was not authorized to speak with them about the employee terminations, but did confirm that it was specifically the Union employees who had been terminated.

Later that day, Padilla and Oliva met with Wysocki and Rubio at the facility. They confronted Wysocki as to why the entire bargaining unit had been terminated, but Wysocki declined to give a reason other than that it was a business decision and he did not have to give them any answers. The Union representatives then noted that they had seen people who were not bargaining unit members going into the back of the house area, presumably to perform unit work, and requested to know how much those employees were being paid, along with payroll information and any other type of pertinent financial documents to show why bargaining unit employees could not be paid to do that work. Wysocki did not provide any of the requested documents, and told the Union they could take him to court again if they wanted.

Also on March 2, 2020, Bokerman emailed Shivas requesting to bargain over the employee terminations and formalizing the Union's request for information, specifically seeking a list of each employee who received a termination notice, their classification, wage rate and date of hire. Bokerman's email noted that the termination notices given to unit employees referenced "profitability issues" and other financial-related issues among other alleged motivating factors for their terminations.

On March 3, 2020, Bokerman emailed Shivas again with an additional list of information the Union was seeking regarding the employees' termination and the subcontracting of that work to an outside staffing agency. Those documents included:

1. A list of all employees who were terminated, which includes their name, classification, date of hire, hourly wage rate, address, phone number, and e-mail address, and copies of any letters sent to said employees:
2. Schedules for any and all employees for the past 3 months;
3. Punch records for any and all employees for the past 3 months;
4. Payroll records for any and all employees for the past 3 months;
5. Layoff and recall notices for any and all employees for the past 3 months;
6. Total benefit days, i.e., vacation, sick, personal, accrued by all bargaining unit employees;
7. Total amount of benefit days paid out to all employees, broken down by employee and specifying which benefit day, e.g., sick day, vacation, etc. was paid and the applicable time period;

8. The name and contact information of the subcontracting company in which the Hotel has engaged to staff the Housekeeping, Laundry, Maintenance, and Coffee Shop at the Hotel;
9. Any and all contracts or agreements between the Hotel and such subcontracting company;
10. Any and all invoices or bills from the subcontracting company;
11. Any and all correspondence with the subcontracting company;
12. Any and all documents relating to the decision to subcontract or terminate bargaining unit employees;
13. Detailed list of the scope of work such subcontracting company shall perform in the Hotel;
14. Any and all information, including, but not limited to, payroll records, full first and last name, etc., regarding the wages and economic benefits received by employees of the subcontracting company while working in the Hotel.
15. Any and all notices of layoff sent to the Union; and
16. Any notices sent to the Union regarding the intention or decision to subcontract bargaining unit employees.

Citing to what the Union considered to be the implied financial motivation for terminating unit employees and subcontracting bargaining unit work found in the termination notices given to unit employees, Bokerman's March 3 email to Shivas also requested the following information:

1. The formal name and address of the owner, operator and/or manager of the Hotel;
2. The names of any individuals or entities that have an ownership, management, or control interest in any entity identified in response to request # 1.
3. Any and all audited or unaudited financial statements for the past 5 years;
4. Any and all profit and loss statements for the past 5 years;
5. Any and all tax returns for the past 5 years;
6. Any and all occupancy, rev par, room rate, or similar reports for the past 5 years;
7. Any and all occupancy, rev par, room rate, or other financial projections;
8. A list of any and all methods for obtaining or booking guests (e.g., websites; advertisements; agreements with or participation in travel agencies or web-based booking sites; agreements with travel agencies, travel groups, web-based booking sites, or the like; etc.);
9. Any and all mortgages, notes, or other liens on the Hotel;
10. Any and all correspondence between the primary lending broker and the Hotel;
11. An accounting of any and all bank, savings, investment or similar accounts held by the Hotel;
12. An accounting of any and all tangible or real property owned by the Hotel or in which the Hotel has an interest;
13. An accounting of any and all debts of the Hotel;
14. An accounting of any and all assets of the Hotel;
15. An accounting of any and all accounts receivable of the Hotel;
16. Any and all other leases and/or contracts to provide services that require on-site labor at the Hotel; and
17. Any and all correspondence regarding the financial viability or position of the Hotel.

When no response to the information requests were initially forthcoming, Bokerman emailed Shivas on March 12, 2020, reiterating the Union's requests, and forwarding the

Union's proposal for a successor collective bargaining agreement with a request for dates to meet for negotiations. Still not having received a response to the information request or the proposed contract negotiations, Bokerman emailed Shivas again on March 23, 2020 and yet again on March 30, 2020, asking for an update on when the Union might expect to hear back. On March 30, 2020, Shivas emailed Bokerman to advise that "[d]ue to ongoing circumstances, I have been unable to meet with my client. I will advise later in the week as to the status."

On April 6, 2020, having not heard back from Respondent, Bokerman emailed Shivas seeking an update, but received no response. On April 24, 2020, Bokerman emailed Shivas yet again seeking an update. Shivas never did respond to Bokerman, but on May 11, 2020, Shivas did email the Union's then-General Counsel, Rich Maroko, to ask when he might be available to speak, ultimately scheduling a conference call for June 6, 2020.

Respondent's use of independent contractors ceased after business continued to drop in March 2020 due to the pandemic, and it has not used any since April 2020. In addition, between March 1 and June 1, 2020, Respondent layed off certain non-unit and supervisory employees as well, as business continued to be diminished from its pre-COVID levels. However, the hotel remained open, with Respondent continuing to book hotel rooms and unit work continuing to be performed by non-unit and managerial staff.

As of the hearing, Respondent still had not provided the Union with the requested information, nor responded to the Union's request to bargain. Respondent has not explicitly communicated an intent to withdraw recognition of the Union, and maintains that it still recognizes the Union as the collective bargaining representative of the unit, and is ready to negotiate a collective bargaining agreement.

Credibility

Testifying at the hearing for the General Counsel were employees Guevara and Flores, along with Oliva and Bokerman from the Union. Testifying for Respondent was Vice President Mark Wysocki. Neither Rubio nor Shivas testified.

I found both Guevara and Flores to be credible witnesses. Though their interests were obviously aligned with the Charging Party, I found both of their demeanors to be honest and straightforward. Both of their testimonies were also consistent with the audio recording of the employees' meeting with Wysocki and Rubio.

Similarly, I found both Oliva and Bokerman, much of whose testimony was unrebutted, to both be credible. Oliva's recollection of the events about which he testified was clear and internally consistent. He appeared to be candid and forthcoming on direct, and was clear and matter-of-fact during his cross-examination. Bokerman's testimony was consistent with the email chain in evidence documenting her communications with Respondent.

By contrast, I did not find Wysocki credible. His explanations for the actions he was taken shifted as he testified, and were inconsistent. For example, he claimed on the one hand to have had no time to negotiate with the Union in February 2020 because he was too busy dealing with COVID cancellations, but on the other hand, he was not too busy to negotiate with an outside agency in February to arrange for non-unit employees to replace the employees he was about to terminate. He also claimed that his hands were tied due to the financial impacts of COVID, but at the same time repeatedly pointed to his difficulties with the Union as

motivating his decisions. He gave no credible explanation for why Respondent bypassed the Union entirely in taking the actions it did.

ANALYSIS

A. Respondent Violated Section 8(a)(1) of the Act by Disparaging the Union

The Board deems an employer that disparages or undermines employee support of their union or its representatives to have violated Section 8(a)(1) of the Act. *See, e.g., Prudential Ins. Co. of America*, 317 NLRB 357 (1995); *Oster Specialty Products*, 315 NLRB 67 (1994); *Carib Inn San Juan*, 312 NLRB 1212 (1993).

This case is the rare instance where an employer's disparaging words to its employees were caught on tape. At the March 1, 2020 meeting when Wysocki spoke to employees, with Rubio translating some of what Wysocki was saying and adding her own, employees were peppered with an array of accusations and disparaging comments about the Union that served to undermine employee support:

(1) The employees were told that the Union had not been willing to negotiate with Respondent;

(2) The employees were advised that the Union told Wysocki it does not care about employees even after Wysocki told the Union several times that he was going to have to close all the Union departments if they don't want to continue negotiating;

(3) Wysocki told employees that the Union was preventing him from talking to them, and that he was only allowed to talk to them because they had been terminated.

(4) Wysocki also told the employees that the Union had cost Respondent $300,000 in legal fees that could have instead been paid to them.

(5) Wysocki also told the employees that the Union didn't let them use the insurance that he claimed to have provided.

(6) The employees were led to believe that it was the Union's fault that they lost their jobs.

These assertions by Respondent were misleading at best, and would clearly have the tendency to undermine employee support of the Union, sending the message that the Union was responsible for their job loss. As such, I find that these statements unlawfully interfered with employees' Section 7 rights in violation of Section 8(a)(1) of the Act.

B. Respondent Violated Section 8(a)(3) and (1) of the Act by Terminating All of its Bargaining Unit Employees.

Section 8(a)(3) of the Act prohibits an employer from discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization. In *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), the Board set forth its causation test for cases alleging violations of Section 8(a)(3) of the Act turning on employer motivation.

First, the General Counsel must make an initial prima facie showing sufficient to support the inference that protected conduct was a "motivating factor" in the employer's decision. *Wright Line*, 251 NLRB 1083 (1980), 10 enfd. 662 F.2d 889 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393, 399-403 (1983). See *Coastal Sunbelt Produce, Inc. & Mayra L. Sagastume*, 362 NLRB No. 126, slip op. at 1 (2015).

Establishing unlawful motivation requires proof that: "(1) the employee engaged in protected activity; (2) the employer was aware of the activity; and (3) the animus toward the activity was a substantial or motivating reason for the employer's action." *Consolidated Bus Transit, Inc.*, 350 NLRB 1064, 1065 (2007), enfd. 577 F.3d 467 (2d Cir. 2009).

If the General Counsel makes that showing, the burden then shifts to the employer to "demonstrate that the same action would have taken place even in the absence of the protected conduct." *Septix Waste, Inc.,* 346 NLRB 494, 496 (2006). An employer "cannot simply present a legitimate reason for its action, but must persuade by a preponderance of the evidence that the same action would have taken place even in the absence of the protected activity." W.F. Bolin Co., 311 NLRB 1118, 1119 (1993).

Here, the fact that Responded terminated all of its Union represented employees on February 29, 2020, while not terminating any non-unit employees at that time, is not in dispute. Indeed, Rubio confirmed as much on March 2, 2020 when she told the Union that only the union employees were fired. Moreover, Wysocki's multiple statements revealing animus toward the Union reveal that it was the employees' union membership that led to their terminations.

As with most of the allegations in the complaint, Respondent's primary defense here is that they had no choice but to terminate these employees because of the financial impact of the oncoming COVID pandemic. However, I do not find that it excuses conduct that plainly violated Section 8(a)(3). This is especially true where a leading complaint Wysocki had about the financial impact was that the Union would not be easy to work with.

However constrained Respondent may have felt about the financial pressures it was facing due to the pandemic, it did not privilege them to terminate its entire union workforce while leaving employed its non-union employees and subcontracting the remaining unit work to non-union outside agency employees. Nor did it privilege Respondent to use its concerns about working with the Union as a justification for terminating its employees.

The undisputed facts are that the hotel remained open even after the unit employees were terminated, and that unit work was being performed by newly retained outside agency employees. Given Wysocki's explicit acknowledgement that the reason he was using those agency employees in place of the unit employees was because he did not think the Union would allow him the flexibility he wanted, it leaves only one reasonable conclusion: that the reason for their termination was their Union membership.

As such, I find those terminations violated Section 8(a)(3) and (1) of the Act.

C. Respondent Violated Section 8(a)(5) and (1) of the Act by Failing to Provide Relevant Information Requested by the Union.

The Supreme Court has long held that an employer must provide a union, on request, with relevant information that is necessary for the proper performance of its duties as the exclusive bargaining representative. *NLRB v. Truitt Mfg. Co.,* 351 U.S. 149, 153 (1956). Indeed, the Supreme Court has held that an employer's duty to bargain collectively extends beyond periodic contract negotiations and includes its obligation to furnish information that allows a union to decide whether to process a grievance under an existing contract. *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 436 (1967).[4]

> "A labor organization's right to information exists not only for the purpose of negotiating a collective-bargaining agreement, but also for the proper administration of an existing contract, including the bargaining required to resolve employee grievances." *Southern California Gas Co.*, 344 NLRB 231, 235 (2005) (*citing Hobelmann Port Services*, 317 NLRB 279 (1995); *Westinghouse Electric Corp.*, 239 NLRB 106, 107 (1978).

Accordingly, the Board has long held that Section 8(a)(5) of the Act obligates an employer to furnish requested information which is potentially relevant to the processing of grievances. "An actual grievance need not be pending nor must the requested information clearly dispose of the grievance." *United Technologies Corp.*, 274 NLRB 504 (1985).

Information requests regarding bargaining unit employees' terms and conditions of employment are "presumptively relevant" and must be provided. *Whitesell Corp*., 352 NLRB 1196, 1197 (2008), adopted by a three-member Board, 355 NLRB 649 (2010), enfd. 638 F.3d 883 (8th Cir. 2011). There is no burden on the part of the Union to prove the relevance of or explain the need for this type of presumptively relevant information.

Information requests regarding non-bargaining unit employees may also be relevant when needed to enforce the parties' collective bargaining agreement or to protect bargaining unit employees' rights. *United Graphics*, 281 NLRB 463 (1986). In addition, a union is entitled to request and receive financial information from the employer where, as here, the employer relies on an inability to pay employees to justify its conduct. *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149 (1956).

Based on my review of the Union's first set of requests, I find that they all relate directly to terms and conditions of employment of unit employees and/or seek information about non-unit employees that directly impact the Union's ability to protect bargaining unit employees' rights. As such, the information sought by the Union is relevant, and the Act requires that it be furnished without the need for the Union to establish relevance.

Here, it is undisputed that the Union repeatedly requested information relevant to the unit employees' termination and after initially ignoring the Union's communications, Respondent failed to furnish the Union with any documents at all. The burden is on an employer, once relevance is established, to provide an adequate explanation or valid defense to its failure to provide the information in a timely manner. *Woodland Clinic*, supra, *Coca-Cola Bottling Co.*, 311 NLRB 424, 425 (1993). Respondent has not met that burden. Indeed,

[4] This is often referred to as "policing the contract." See, e.g., *United Graphics, Inc.*, 281 NLRB 463, 465 (1986).

Respondent does not make explicit any clear argument why it failed to provide the requested information, relying entirely on its business necessity defense upon which its entire case rests. In the absence of any explanation, I find that Respondent has not rebutted the presumption of relevance that attached to all of the information the Union requested.

Accordingly, I find Respondent violated Section 8(a)(5) and (1) of the Act by failing to provide the requested information.

D. Respondent Violated Section 8(a)(5) and (1) of the Act by Unilaterally Terminating All of its Bargaining Unit Employees, Subcontracting Bargaining Unit Work without Providing the Union Notice and an Opportunity to Bargain, and Therefore Effectively Withdrew Recognition from the Union.

While Respondent has never explicitly stated that it has withdrawn recognition of the Union, its actions here necessitate a finding that it has effectively done so based on conduct that is mostly undisputed.

The Board does not require that an employer declare it has withdrawn recognition before a finding can be made that the employer has done so. *See, e.g., Wayron, LLC*, 364 NLRB No. 60 (2016), where the Board relied on the employer's failure to notify the Union that it had terminated all of its employees, and delayed in responding to the Union's information request regarding those terminations to find that the employer had effectively withdrawn recognition.

Here, not only did Respondent terminate its entire union workforce and subcontract that work to non-unit employees, it completely ignored the Union's multiple requests for information relating to those terminations and subcontracting. At the same time, Respondent was actively disparaging the Union directly to employees and failing to respond to the Union's proposal for a new collective bargaining agreement. And this conduct occurred just a few months after an adverse ruling from the Board regarding Respondent's prior anti-Union conduct.

Taken together, based on all of Respondent's above-described unlawful conduct, I find that it has effectively withdrawn recognition of the Union as the exclusive collective-bargaining representative of the unit in violation of Section 8(a)(5) and (1) of the Act.

Conclusions of Law

1. Arbah Hotel Corp. d/b/a Meadowlands View Hotel is an Employer.

2. The Union, New York Hotel and Motel Trades Council, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act and represents a bargaining unit comprised of workers employed by Respondent.

3. Since on or about March 1, 2020, Respondent has committed unfair labor practices within the meaning of Section 8(a)(1) of the Act by disparaging and undermining the Union.

4. By terminating all of its employees on February 29, 2020, Respondent has violated Section 8(a)(3) and (1) of the Act.

5. Since on or about March 2, 2020, Respondent has committed unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act by refusing to bargain collectively with the Union by failing and refusing to furnish it with information it requested March 2, 3, 12, 23 and 30, 2020 and April 6 and 24, 2020, that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of Respondent's unit employees.

6. By failing and refusing to bargain with the Union, Respondent has violated Section 8(a)(5) and (1) of the Act

7. The above violations constitute unfair labor practices that affect commerce within the meaning of the Act.

Remedy

Having found that Respondents has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take appropriate affirmative action designed to effectuate the policies of the Act.

Since Respondent has unlawfully terminated employees, it must offer reinstatement to all affected employees, and it must make those employees whole for any loss of earnings or benefits, including, *inter alia*,

Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010). The Respondent shall also file a report with the Social Security Administration allocating backpay to the appropriate calendar quarters and shall also compensate the discriminatees for the adverse tax consequences, if any, of receiving one or more lump-sum backpay awards covering periods longer than 1 year. *Don Chavas, LLC d/b/a Tortillas Don Chavas and Mariela Soto and Anahi Figueroa,* 361 NLRB No. 10 (2014).

In addition to the backpay-allocation report, Respondent shall file with the Regional Director for Region 22 a copy of the discriminatees' corresponding W-2 form(s) reflecting the backpay award. *Cascades Containerboard Packaging*, 370 NLRB No. 76 (2021). In addition, Respondent is ordered to reimburse the discriminatees for all search-for-work-related expenses regardless of whether they received interim earnings in excess of these expenses overall or in any given quarter. *King Soopers, Inc.*, 364 NLRB No. 93 (2016).

I shall also recommend that, to the extent it has not already done so, Respondent shall timely furnish the following information to the Union: all of the information in the Union's March 2, 3, 12, 23 and 30, 2020 and April 6 and 24, 2020 information requests.

Finally, I shall recommend that Respondent by ordered to recognize and bargain with the Union as the exclusive collective bargaining representative of the Unit.

On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended[5]

[5] If no exceptions are filed as provided in Sec. 102.46 of the Board's Rules and Regulations, the findings,

ORDER

The Respondent, Arbah Hotel Corp. d/b/a Meadowlands View Hotel, their officers, agents, successors, and assigns, shall

1. Cease and desist from:

(a) Disparaging and/or undermining the Union to our employees.

(b) Discharging or otherwise discriminating against any employee for engaging in activity protected by Section 7 of the Act.

(c) Refusing to bargain collectively with the Union by failing and refusing to provide the Union information requested that is necessary and relevant to its role as the exclusive representative of Respondent's unit employees.

(d) Refusing to recognize and bargain collectively in good faith with the Union.

(e) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) On request, bargain in good faith with the Union as the exclusive bargaining representative of the bargaining unit employees concerning terms and conditions of employment, and, if an understanding is reached, embody the understanding in a signed agreement.

(b) Within 14 days from the date of the Board's Order, offer all affected employees full reinstatement to their former jobs, or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(c) Make all affected employees whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the decision.

(d) Compensate all affected employees for their search-for-work and interim employment expenses regardless of whether those expenses exceed their interim earnings.

(e) Make whole its employees for any expenses ensuing from the Respondents' failure to make required contributions to the Union's benefit funds and make whole the Union's benefit funds for losses suffered, in the manner set forth in the remedy section of this decision.

(f) Compensate affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 22, within

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conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Board's Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

21 days of the date such awards are fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar year for each employee.

(g) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of monies due under the terms of this Order.

(h) Furnish to the Union, in a timely manner, all of the information in the Union's March 2, 3, 12, 23 and 30, 2020 and April 6 and 24, 2020 information requests.

(i) Within 14 days after service by the Region, post at all of its facilities, copies of the attached notice marked "Appendix."[6] Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to the physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondents customarily communicate with their employees by such means. Reasonable steps shall be taken to ensure that the notices are not altered, defaced or covered by other material. If the Respondents have gone out of business, the Respondents shall duplicate and mail, at their own expense, a copy of the notice to all employees and former employees employed by Respondents at any time since February 29, 2020.

(j) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondents have taken to comply.

Dated, Washington, D.C. September 30, 2021

Jeffrey P. Gardner
Administrative Law Judge

[6] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT do anything to prevent you from exercising these rights.

WE WILL NOT disparage and/or undermine the Union to our employees.

WE WILL NOT discharge or otherwise discriminate against any employee for engaging in activity protected by Section 7 of the Act.

WE WILL NOT fail and refuse to recognize and bargain with New York Hotel and Motel Trades Council, AFL-CIO (the Union) as the exclusive collective-bargaining representative of our employees in the bargaining unit.

WE WILL NOT make unilateral changes to terms and conditions of employment without first bargaining with the Union.

WE WILL NOT assign bargaining unit work to non-unit employees or subcontract unit work without providing notice and an opportunity to bargain to the Union and without reaching agreement or overall good faith impasse in bargaining.

WE WILL NOT fail and refuse to recognize and bargain with the Union by failing and refusing to furnish it with requested information in a timely manner that is relevant and necessary to the Union's performance of its duties as your collective-bargaining representative.

WE WILL NOT in any other manner interfere with, restrain or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, within 14 days from the date of this Order, offer affected employees full reinstatement to their former jobs, or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make all affected employees whole for any loss of earnings and other benefits suffered as a result of the discrimination against them.

WE WILL compensate affected employees for their search-for-work and interim employment expenses regardless of whether those expenses exceed their interim earnings.

WE WILL compensate affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and **WE WILL** file with the Regional Director for Region 22, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating backpay awards to the appropriate calendar years for each employee along with a copy of each employee's corresponding W-2 form(s) reflecting the backpay award.

WE WILL cease and desist from disparaging and/or undermining the Union to our employees.

WE WILL furnish to the Union in a timely manner the information it requested in its March 2, 3, 12, 23 and 30, 2020 and April 6 and 24, 2020 information requests.

WE WILL on request, bargain in good faith with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the following bargaining unit:

> All room attendants, housemen, porters, linen room, drivers, maintenance, cooks, waiter, waitresses, busboys and dishwashers excluding all supervisory personnel.

ARBAH HOTEL CORP. d/b/a MEADOWLANDS VIEW HOTEL
(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below:

20 Washington Place, 5th Floor, Newark, NJ 07102–3110
(973) 645–2100, Hours: 8:30 a.m. to 5 p.m.
You may also obtain information from the Board's website: www.nlrb.gov.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/22-CA-257539 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273–1940.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE
THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (862) 229–7055.